

No. 10398

In the United States Circuit Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA, APPELLANT

v.

GORDON T. CAREY ET AL., APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF OREGON

BRIEF FOR THE UNITED STATES

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OPINION BELOW

The district court did not write an opinion. The reasons given by the court for entering the order appealed from are found at R. 82-93.

JURISDICTION

This is an appeal from an order entered September 28, 1942, vacating a judgment on a declaration of taking, striking the declaration of taking from the files, and dismissing the petition for condemnation (R. 78-79). Notice of appeal was filed December 26, 1942 (R. 80). The jurisdiction of the district court was invoked under the Act of August 1, 1888, c. 728, 25

Stat. 357, 40 U. S. C. sec. 257 (R. 3). The jurisdiction of this Court is invoked under section 128 of the Judicial Code as amended, 28 U. S. C. sec. 225 (a).

QUESTIONS PRESENTED

1. Whether the petition states a cause of action.
2. Whether the district court had jurisdiction of the proceedings.
3. Whether the trial court exceeded its powers in vacating the judgment on the declaration of taking and dismissing the proceedings.
4. Whether the parties moving for dismissal were estopped to attack the validity of the condemnation proceedings.

STATUTES AND EXECUTIVE ORDER INVOLVED

The pertinent provisions of section 1 of the Act of August 1, 1888, 25 Stat. 357, c. 728, 40 U. S. C. sec. 257; sections 1 and 2 of the Unemployment Relief Act of March 31, 1933, 48 Stat. 22; section 14 of the Emergency Relief Appropriation Act for 1935, 49 Stat. 119, April 8, 1935; Executive Order No. 6724, May 28, 1934, are set out in the appendix, *infra*, p. 20-23.

STATEMENT

On June 14, 1935, the United States instituted proceedings to condemn 3,474.34 acres of land in Harney County, Oregon. The petition alleged that the proceedings were instituted under the authority of the Unemployment Relief Act of March 31, 1933, 48 Stat. 22; Executive Order No. 6724, May 28, 1934; and the Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. sec.

257, 258, “for use in the construction of useful public works and improvements in connection with the Lake Malheur Migratory Waterfowl Refuge, and for such other uses as may be authorized by Congress or by Executive Order” (R. 3). With the petition the Government filed a declaration of taking pursuant to the Act of February 26, 1931, c. 307, 46 Stat. 1421, 40 U. S. C. sec. 258a, and deposited \$32,227.26 in court as estimated compensation. On the same day an ex parte judgment was entered declaring that the United States was entitled to acquire the property for the purposes set out in the petition, confirming the passage of title by the declaration of taking, and ordering the delivery of possession on or before July 15, 1935 (R. 1-26). A supplemental petition was filed July 19, 1935, naming as defendants additional persons who had or might have had some interest in the property taken (R. 26-32).

The property described in the petition (R. 3-6) and the declaration of taking (R. 21) were certain fractional sections located along the Neal survey line around Lake Malheur, Mud Lake, and the Narrows,¹

And together therewith all right, title, claim, and interest of the owners of said tracts to lands lying within the Neal survey lines, purporting to surround Malheur and Mud Lakes, and the Narrows.

Twenty parcels were included in the total acreage described in the petition and the declaration of taking (R. 3-6). From time to time the owners of the vari-

¹ See *United States v. Otley*, 127 F. 2d 998 (C. C. A. 9, 1942) ; *United States v. Oregon*, 295 U. S. 1, 5 (1935).

ous parcels petitioned to withdraw their shares of the deposit, and upon order of court payments were made (R. 102-109). Most of the withdrawals were made in the latter part of 1935 and first part of 1936.² Orders of default were entered on January 13 and February 28, 1936, as to numerous defendants having or claiming an interest in the land taken (R. 105). It does not appear in the record on appeal how many parties were defaulted, but numerous parties who might have had or claimed an interest in all of the parcels except Parcels 4e, 14a, b, 16, and 31a were included. Many of the owners withdrawing the deposits executed deeds confirming the passage of title to their property to the United States (R. 85, 90-91). This fact together with the default orders meant the disposal of most of the issues in the case except those arising out of the pleadings filed by the owners of certain interests in Parcels 16 and 31a.

On September 9, 1935, Gordon T. Carey, claimant of an undivided one-half interest in Tract 31a, and Georgia E. George, Raymond L. George, Clifford E. George, William J. George, and Edna George, his wife, Anna Carey and Harry A. Carey, her husband, Eliza O. Shoemaker and E. O. Shoemaker, her husband, Stacy D. George and Betty M. George, his wife, claimants of certain undivided interests in Tract 16, moved the court to require the United States to make more definite and certain that portion of the petition set out above with reference to the lands within

² At the present time there remains on deposit only \$1,390.43 of the total \$32,227.26 originally deposited in court (R. 110-111).

the Neal survey lines by setting forth and particularizing what area within the Neal survey lines in front of Tracts 16 and 31a the Government was seeking to acquire by the condemnation proceeding (R. 32). This motion raised complex questions of riparian rights and the title to lands in the bed of Lake Malheur. To settle the question of title to the land in the lake bed, a suit to quiet title was instituted by the United States in the district court on December 17, 1936. See *United States v. Otley*, 127 F. 2d 988 (C. C. A. 9, 1942).

On January 25, 1937, upon oral stipulation of the parties in open court, the undivided one-half interest of Gordon T. Carey in Tract 31a, and the undivided four-ninths interest of William George and Edna George, his wife; Anna Carey and Harry Carey, her husband; Eliza O. Shoemaker and E. O. Shoemaker, her husband; and Stacy D. George and Betty E. George, his wife, in Tract 16 were severed and leave was given the United States to file an amended petition as against those interests, excluding therefrom any and all portions of the property lying within the Neal survey line (R. 34-37).³ Amended petitions were accordingly filed on January 27, 1937, setting out in detail the authority for and the purpose of the proceedings and alleging that the property described in the original petition as Tracts 16 and 31a, did not include

³ All of the persons whose interests were thus severed had been made parties to the suit to quiet title, in addition to other persons owning lands around Lake Malheur, but not involved in the condemnation proceeding. See *United States v. Otley*, 127 F. 2d 988 (C. C. A. 9, 1942).

any riparian rights which the defendants may have had or claimed as appurtenant to their tracts or any lands within the Neal survey lines (R. 38-54). The amended petitions alleged as authority for taking, the Unemployment Relief Act of March 31, 1933, 48 Stat. 22, as continued by section 14 of the Emergency Relief Appropriation Act for 1935, 49 Stat. 115, 119, April 8, 1935; the Fourth Deficiency Appropriation Act for the Fiscal Year 1933, 48 Stat. 274, 275; Executive Order 6724, May 28, 1934. The petitions then alleged that under the Act of March 31, 1933, 48 Stat. 22, and by authority of the President, the Secretary of Agriculture had duly adopted an emergency conservation works project for the improvement of the Lake Malheur Reservation; that the project included the construction of dikes, the building of water control structures, the conservation of water, the control of flood water, the construction of truck trails, food and cover planting, fire protection and the building of nesting islands to provide additional food and cover for waterfowl. It was also alleged that this program would be effective to relieve unemployment, restore depleted natural resources, and would result in the construction of useful public works, and that the lands taken would be used for the emergency conservation works theretofore described and also as a part of the Lake Malheur Reservation for the restoration and conservation of migratory birds.

On March 9, 1939, Stacy and Betty George filed a petition alleging that it was intended in the condemnation proceeding to acquire all right, title and interest in the lake bed, that it had been agreed that the claims

asserted by the owners of the undivided four-ninths interest in Tract 16 would be determined in the *Otley* case and asking to withdraw their share of the deposit "without prejudice to any right which they might ultimately have for additional compensation in the event they are awarded ownership * * *" of lands in the lake bed. Payment of the deposit to these parties was ordered by the court. (R. 56-60.)

On August 22, 1939, Gordon T. Carey answered the amended petition denying all allegations except his ownership of the one-half interest in Parcel No. 31a and praying for judgment against the United States for the alleged value of his land. On September 12, 1939, Stacy D. George, William J. George, and the other owners of a four-ninths interest in Parcel No. 16 filed a similar answer to their amended petition. (R. 60-68.)

On September 20, 1939, Gordon T. Carey petitioned for an order to withdraw his share of the deposit made for Tract 31a. On the same day William J. George and Edna George, his wife; Anna George Carey and Harry A. Carey, her husband; Eliza O. Shoemaker and E. O. Shoemaker, her husband; Stacy D. George and Betty M. George, his wife, petitioned for an order to withdraw their shares of the deposit. (R. 68-75.) It does not appear that these petitions were ever acted upon by the court.

On June 29, 1940, the district court announced its decision in the *Otley* case, generally sustaining the riparian claims of patentees along the Neal line. On December 4, 1940, William J. George, Anna Carey, and Eliza O. Shoemaker, owners of an undivided three-

ninths interest in Parcel No. 16, and Gordon T. Carey, owner of an undivided one-half interest in Parcel No. 31a, moved to vacate the judgment on the declaration of taking and dismiss the petition filed on June 14, 1935, on the grounds that the petition did not state sufficient facts to constitute a cause of action, and that the court had no jurisdiction (R. 76-77). A hearing on the motion was had on January 2, 1941, and a brief was filed by the United States (R. 110), but no action was taken until after this Court decided the Government's appeal in the *Otley* case on April 21, 1942.

On September 28, 1942, at the next term of the district court, Mr. Dillard, the Assistant United States Attorney, appeared for the United States and Messrs. Hicks and McCulloch appeared as attorneys for Wm. J. George, Anna Carey, Eliza O. Shoemaker, and Gordon T. Carey in the condemnation proceeding (R. 82). The court's attention was directed to the motion of December 4, 1940, to dismiss the proceeding which was still pending (R. 86-88).

The court stated that he would rather not set aside the proceedings on the grounds urged by the owners, but apparently because of an informal conference with another government official he was in doubt as to what the government intended to do with the case. It was his impression, although he was not sure that it was true, that the Government would like to abandon the proceeding. Counsel representing the United States, who knew nothing of any such intention on the part of the Government, stated that the Government would be ready for trial if the case were set for hearing and that so far as he knew it still wanted the land it had

set out to acquire. (R. 90-92.) The court then ruled that he would dismiss the *entire* proceeding, with the following comment (R. 93):

I am going to find out what is happening in this case. I will just dismiss it and then maybe something will happen. I haven't been able to get anything done for seven years. I don't know whether it is properly founded or not. I will probably be reversed in it, but I am willing to take that chance.

An order vacating the judgment on the declaration of taking, striking the declaration of taking from the files of the court, and dismissing the petition for condemnation was entered on September 28, 1942 (R. 78-79). Notice of appeal was filed on December 26, 1942 (R. 80).

SPECIFICATION OF ERRORS

The district court erred—

1. In vacating, setting aside and annulling the judgment on the declaration of taking.
2. In striking the declaration of taking from the files of the court.
3. In dismissing the petition for condemnation.

ARGUMENT

No reason was given by the court below for vacating the judgment on the declaration of taking, striking the declaration of taking from the files, and dismissing the petition. In fact, Judge Fee admitted he didn't "know whether it [the dismissal] was properly founded or not." He was just going to dismiss the case and maybe something would happen (R. 93).

The grounds assigned in the motion to dismiss are that the petition does not state sufficient facts to constitute a cause of action and that it does not state sufficient facts to give the court jurisdiction. Neither of these objections is well taken.

I

The district court had jurisdiction of the proceedings

As alleged in the petition and declaration of taking this proceeding was brought pursuant to the Act of August 1, 1888, c. 728, sec. 1, 25 Stat. 357, 40 U. S. C. sec. 257, which provides as follows:

In every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so. And the United States district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, * * *.

Clearly this section confers upon the court jurisdiction of condemnation proceedings. *United States v. Nudelman*, 104 F. 2d 549, 552 (C. C. A. 7, 1939), certiorari denied 308 U. S. 589.

The petition alleges the authority of the Secretary of Agriculture to acquire the property and his determination that it was necessary and advantageous to the United States to acquire the lands described in

the petition by condemnation (R. 2-3). Thus, the jurisdictional facts were sufficiently alleged. However, even if they had been defective, and it has not been shown that they were, the district court, nevertheless, acquired jurisdiction and could have permitted an amendment to cure any defects. *United States v. Gettysburg Electric Ry. Co.*, 160 U. S. 668, 685-686 (1896); *Goodman v. City of Ft. Collins*, 164 Fed. 970 (C. C. A. 8, 1908). Cf. *Forbes v. United States*, 268 Fed. 273, 277 (C. C. A. 5, 1920).

II

The institution of the proceedings was authorized

The condemnation proceedings were authorized by the Unemployment Relief Act of March 31, 1933, 48 Stat. 22, as continued by section 14 of the Emergency Relief Appropriation Act for 1935, 49 Stat. 115, 119, April 8, 1935, and Executive Order No. 6724, May 28, 1934. Section 1 of the Unemployment Relief Act of March 31, 1933, 48 Stat. 22, provided in part as follows:

That for the purpose of relieving the acute condition of widespread distress and unemployment now existing in the United States, and in order to provide for the restoration of the country's depleted natural resources and the advancement of an orderly program of useful public works, the President is authorized, under such rules and regulations as he may prescribe and by utilizing such existing departments or agencies as he may designate, to provide for employing citizens of the United States who are unemployed, in the construction, maintenance and carrying on of works of a public nature in connection with the forestation of

lands belonging to the United States * * * the prevention of forest fires, floods and soil erosion, plant pest and disease control, the construction, maintenance or repair of paths, trails and fire-lanes in the national parks and national forests, and such other work on the public domain * * * and Government reservations⁴ incidental to or necessary in connection with any projects of the character enumerated, as the President may determine to be desirable: * * *

Section 2 of the Act authorized the President, or the head of any department or agency authorized by him, for the purpose of carrying out the provisions of the Act, "to acquire real property by purchase, donation, condemnation, or otherwise * * *."⁵

The President, on May 28, 1934, issued the following order (Executive Order No. 6724):

WHEREAS it is necessary to purchase or rent various lands in order to provide suitable refuges for, and to protect and conserve, migratory birds and other wild life constituting depleted natural resources of the United States; and

WHEREAS the work and improvements necessary to be performed and made upon such lands to make them suitable and proper refuges for migratory birds and other wild life will provide protection for such lands from forest fires,

⁴ As alleged in the amended petition, the Lake Malheur Reservation was established by Executive Order No. 929, August 18, 1908. See *United States v. Otley*, 127 F. 2d 988, 991 (C. C. A. 9, 1942).

⁵ The President's authority under this Act was extended to March 31, 1937, by section 14 of the Emergency Relief Appropriation Act of April 8, 1935, 49 Stat. 119.

floods, and soil erosion, and plant pest and disease, and aid in the restoration of the country's depleted natural resources; and

WHEREAS the purchase of such lands will provide employment for citizens of the United States who are unemployed;

Now, THEREFORE, by virtue of and pursuant to the authority vested in me by the act of Congress entitled "An act for the relief of unemployment through the performance of useful public work, and for other purposes," approved March 31, 1933 (ch. 17, 48 Stat. 22), and the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (ch. 100, 48 Stat. 274, 275), the Secretary of Agriculture is hereby authorized to expend for the purchase⁶ or rental of such lands as are suitable for the aforesaid purpose (including the costs incident to purchase or rental) not more than \$1,000,000 of the sum of \$20,000,000 allocated from the appropriation for National Industrial Recovery and made available to the Secretary of Agriculture by Executive Order No. 6208, of July 21, 1933, for the purchase of forest lands for emergency conservation work.

The executive order was authorized by the Unemployment Relief Act of 1933. 37 Op. A. G. 445 (1934).⁷

⁶ If the purchase is authorized it follows that condemnation is also authorized. Act of August 1, 1888, 40 U. S. C. sec. 257, 25 Stat. 357; *Albert Hanson Lumber Company v. United States*, 261 U. S. 581, 585-586 (1923); *Barnidge v. United States*, 101 F. 2d 295, 297 (C. C. A. 8, 1939); *United States v. Threlkeld*, 72 F. 2d 464, 466 (C. C. A. 10, 1934); *United States v. Graham & Irvine*, 250 Fed. 499, 501-502 (W. D. Va., 1917).

⁷ The executive order under consideration by the Attorney General was No. 6684 which was rescinded by Executive Order No.

Consequently it is apparent that the proceedings were authorized and could not have been properly dismissed for lack of authority.

III

The taking was for a public use

The original petition and the declaration of taking state that the lands involved are being acquired for use in the construction of useful public works and improvements in connection with the Lake Malheur Migratory Waterfowl Refuge and for such other uses as may be authorized by Congress or by executive order (R. 3, 20). The amended petitions filed as to Tracts 16 and 31a contain more detailed allegations as to the purpose of the acquisition and allege as follows (R. 40-41, 49-50):

* * * the Secretary of Agriculture has duly adopted an emergency conservation works project for the improvement of the Lake Malheur Reservation. This project includes the construction of dikes; the building of water-control structures; the conservation of water; the control of flood-waters; the construction of truck trails; food and cover planting; fire protection; and the building of nesting islands to provide additional food and cover for waterfowl. * * * This program of improvement is effective to relieve unemployment, restore depleted natural resources, and will result in the construction of useful public works * * *

The tract of land described * * * is requisite and necessary to be fully vested in the

6724. The two orders were identical except for a change in the allocation of funds. See Appendix, pp. 21-23.

United States of America, free and clear of all outstanding claims of ownership, for the reason that a part of said emergency conservation work is necessary to be done thereon, or because the said land will be affected thereby. The public use for which the said lands now are required is the accomplishment of the emergency conservation works project herein described, but the said lands are also to be used as a part of the Lake Malheur Reservation for the restoration and conservation of migratory birds in furtherance of the objects of the Migratory Bird Treaty (39 Stat. 1702), the Migratory Bird Treaty Act (40 Stat. 755), the Migratory Bird Conservation Act (46 Stat. 1222), and for such other public uses as may be authorized by Congress or by Executive Order.

If the Federal Government has power under the Constitution to embark upon a project for which land is sought, the use is a public one. *United States v. Gettysburg Electric Ry. Co.*, 160 U. S. 668, 679 (1896); *Barnidge v. United States*, 101 F. 2d 295, 298 (C. C. A. 8, 1939). Hence, projects for the prevention of unemployment, conservation of natural resources, prevention of soil erosion, reforestation, and protection and preservation of migratory birds are for public purposes under the Constitution. *Steward Machine Co. v. Davis*, 301 U. S. 548, 586-587 (1937); *Missouri v. Holland*, 252 U. S. 416, 432, 435 (1920); *United States v. Montana*, 134 F. 2d 194, 196-197 (C. C. A. 9, 1943); *Bastian v. United States*, 118 F. 2d 777, 778-779 (C. C. A. 6, 1941); *United States v. Dieckmann*, 101 F. 2d 421, 424-425 (C. C. A. 7, 1939); *School District No. 37*

v. *Isackson*, 92 F. 2d 768, 771 (C. C. A. 9, 1937); *In re United States*, 28 F. Supp. 758, 761-765 (W. D. N. Y. 1939); *United States v. 546.03 Acres, More or Less, of Land, etc.*, 22 F. Supp. 775, 777 (W. D. Pa. 1938); *United States v. 2,271.29 Acres of Land*, 31 F. 2d 617, 620, 621 (W. D. Wis. 1928).

IV

The trial court exceeded his powers in vacating the judgment on the declaration of taking and dismissing the proceedings

When, pursuant to the provisions of the Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. sec. 258a, a declaration of taking was filed in this case and the estimated compensation deposited in court, title to the lands described vested in the United States and could be divested only by congressional authorization. *United States v. Sunset Cemetery*, 132 F. 2d 163, 164 (C. C. A. 7, 1942). Neither the court nor any agent of the Government had power thereafter to divest the United States of title. It is not meant, of course, that the proceedings could not be dismissed if the court, upon proper motion, found that there was, for example, no authority for the taking. In such case the declaration of taking would be a nullity and ineffective to vest title. *City of Oakland v. United States*, 124 F. 2d 959, 963 (C. C. A. 9, 1942), certiorari denied 316 U. S. 679. However, as has been shown, no such ground is presented in this case for vacating the judgment and dismissing the proceedings.

The only apparent reasons for the action taken by the court were his doubts as to what the Government

intended to do with the case and the delay in concluding the proceedings. Clearly, the judge's doubts as to what the Government intended to do, based on an impression received from an informal conference with another Government official, an impression he "was not sure was true" is not justification for dismissing the proceeding and striking from the files the declaration of taking which had vested title in the United States to some 4,000 acres of land for which over \$30,000.00 had already been paid by court order in the proceedings.⁸

The delay in finally concluding the proceedings was due to the necessity of awaiting the decree in the *Otley* case, which would settle the title disputes in this case (R. 90). Government counsel appeared when the case was called at the first term of court after the *Otley* decision and stated that "of course we [the Government] would have to be ready for trial" if the case were set for a hearing (R. 91). Consequently there was no lack of prosecution on the part of the Government to justify a dismissal even if the court had had power to do so.

V

The parties moving for dismissal were estopped to attack the validity of the proceedings

Gordon T. Carey, William J. George, Anna Carey, and Eliza Shoemaker, the owners who moved to dis-

⁸ Although the apparent owners of most of the parcels executed confirmatory deeds (*supra*, p. 4), their titles were not acceptable to the Attorney General (see R. 6-17). Thus, unless the condemnation proceedings are reinstated the United States will not have acquired an unencumbered title even as to the parcels for which deeds were given.

miss the proceedings on the grounds that the petition did not state sufficient facts to constitute a cause of action and that the petition did not state sufficient facts to give the district court jurisdiction, were estopped to raise any objection to the proceedings. On September 20, 1939, these parties had moved to withdraw the money deposited in court as estimated compensation for their interests (R. 68-75). It was after this that they moved for dismissal (R. 76-77). Thus, although seeking the benefits, these parties attack the validity of the proceeding.

The right to object to the validity of a statute authorizing a condemnation proceeding may be lost by waiver or estoppel. *United States v. Nudelman*, 104 F. 2d 549, 552-553 (C. C. A. 7, 1939), certiorari denied 308 U. S. 589. In that case it was held that an owner who had consented to the entry of judgment and accepted payment for five other parcels owned by her and taken for the same project in contemporaneous proceedings was estopped to attack the Government's authority to condemn. One cannot, after accepting the benefits of a statute, attack its validity. *St. Louis Co. v. Prendergast Co.*, 260 U. S. 469 (1923); *State v. Melville*, 149 Ore. 532, 548-549, 39 P. 2d 1119, 41 P. 2d 1071 (1935); *Oregon v. Portland Gen. Elec. Co.*, 52 Ore. 502, 530, 95 Pac. 722 (1908). In fact, actual receipt of benefits under a statute are not necessary to constitute an estoppel. It is sufficient if they are sought. *Great Falls Mfg. Co. v. Attorney General*, 124 U. S. 581, 598-600 (1888). Consequently, the

parties moving for dismissal are estopped by their motion to withdraw the deposit from raising any objection to the validity of the proceedings.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the order appealed from should be reversed.

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SEPTEMBER 1943.

APPENDIX

Section 1 of the Act of August 1, 1888, 25 Stat. 357, c. 728, 40 U. S. C. sec. 257, provides, in part, as follows:

In every case in which the Secretary of the Treasury or any other officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so. And the United States district courts of the district wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, * * *.

Sections 1 and 2 of the Unemployment Relief Act of March 31, 1933, 48 Stat. 22-23, provide, in part, as follows:

That for the purpose of relieving the acute condition of widespread distress and unemployment now existing in the United States, and in order to provide for the restoration of the country's depleted natural resources and the advancement of an orderly program of useful public works, the President is authorized, under such rules and regulations as he may prescribe and by utilizing such existing departments or agencies as he may designate, to provide for employing citizens of the United States who are unemployed, in the construction, maintenance and carrying on of works of a public nature in connection with the forestation of lands belong-

ing to the United States or to the several states which are suitable for timber production, the prevention of forest fires, floods and soil erosion, plant pest and disease control, the construction, maintenance or repair of paths, trails and firelanes in the national parks and national forests, and such other work on the public domain, national and State, and Government reservations incidental to or necessary in connection with any projects of the character enumerated, as the President may determine to be desirable: * * *

SEC. 2. * * * the President, or the head of any department or agency authorized by him to construct any project or to carry on any such public works, shall be authorized to acquire real property by purchase, donation, condemnation, or otherwise, * * *

Section 14 of the Emergency Relief Appropriation Act for 1935, 49 Stat. 115,119, April 8, 1935, provides as follows:

The authority of the President under the provisions of the Act entitled "An Act for the relief of unemployment through the performance of useful public work, and for other purposes" approved March 31, 1933, as amended, is hereby continued to and including March 31, 1937.

Executive Order No. 6724, May 28, 1934, provides as follows:

WHEREAS it is necessary to purchase or rent various lands in order to provide suitable refuges for, and to protect and conserve, migratory birds and other wild life constituting depleted natural resources of the United States; and

WHEREAS the work and improvements necessary to be performed and made upon such lands to make them suitable and proper refuges for migratory birds and other wild life will provide protection for such lands from forest fires, floods and soil erosion, and plant pest and disease, and

aid in the restoration of the country's depleted natural resources; and

WHEREAS the purchase of such lands will provide employment for citizens of the United States who are unemployed;

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the act of Congress entitled "An act for the relief of unemployment through the performance of useful public work, and for other purposes", approved March 31, 1933 (ch. 17, 48 Stat. 22), and the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (ch. 100, 48 Stat. 274, 275), the Secretary of Agriculture is hereby authorized to expend for the purchase or rental of such lands as are suitable for the aforesaid purposes (including the costs incident to purchase or rental) not more than \$1,000,000 of the sum of \$20,000,000 allocated from the appropriation for National Industrial Recovery and made available to the Secretary of Agriculture by Executive Order No. 6208, of July 21, 1933, for the purchase of forest lands for emergency conservation work.

Executive Order No. 6684, of April 19, 1934, authorizing the purchase or rental of land for emergency conservation work, is hereby rescinded.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
May 28, 1934.

Executive Order No. 6684, April 19, 1934, rescinded by Executive Order No. 6724, May 28, 1934, provided as follows:

WHEREAS it is necessary to purchase or rent various lands in order to provide suitable refuges for, and to protect and conserve, migratory birds and other wild life constituting depleted natural resources of the United States; and

WHEREAS the work and improvements necessary to be performed and made upon such lands to make them suitable and proper refuges for migratory birds and other wild life will provide protection for such lands from forest fires, floods and soil erosion, and plant pest and disease, and aid in the restoration of the country's depleted natural resources; and

WHEREAS the purchase of such lands will provide employment for citizens of the United States who are unemployed;

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the act of Congress entitled "An act for the relief of unemployment through the performance of useful public work, and for other purposes", approved March 31, 1933 (48 Stat. 22), the purchase or rental of such lands as are suitable for the aforesaid purposes is hereby authorized; and by virtue of the authority vested in me by the Fourth Deficiency Act, fiscal year 1933, approved June 16, 1933 (48 Stat. 274), the sum of \$1,000,000 is hereby allocated for the purchase or rental of such lands (including the costs incident to purchase or rental) from the appropriation made by the said deficiency act for carrying into effect the provisions of the said act of March 31, 1933.

The sum herein allocated shall be transferred by the Treasury Department to the credit of the War Department for the purchase or rental of such lands (including the costs incident to purchase or rental) and shall, upon request of the Chief of Finance, under direction of the Director of Emergency Conservation Work, be transferred by the Treasury to the credit of the Department of Agriculture, and the funds so transferred shall be withdrawn on requisition by the Secretary of Agriculture.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
April 19, 1934.

